IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3653 OF 2006

Rajesh @ Bablu Dayachand Jain ...Applicant

Vs.

The State of Maharashtra & Anr. ...Respondents

Shri Ganesh Gole i/by P.P.Runwal for the Applicant.

Shri A.S.Shitole, A.P.P for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 11, 2006.

ORAL JUDGMENT:

1. Rule. The learned A.P.P waives service for the Respondents. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) is to the show-cause notice issued under section 111 of the Code of Criminal Procedure, 1973 against the Applicant. The show-cause notice is challenged before this court on various grounds. The one of the grounds is that show cause notice has been issued at the behest of a competitor of the Applicant in his business. It is submitted that the notice is based on allegations which are stale. It is alleged that initiation of proceeding

itself is illegal as an order as required by section 111 of the said Code has not been passed.

3. The learned A.P.P opposed the Application by pointing out that the Application is filed for challenging the show cause notice issued under section 111 of the said Code and therefore, no interference is called for. He has fairly produced the file of the proceedings of the case before me.

4. I have perused the file. On plain reading of relevant provisions namely, section 111 of the Code, it is obvious that when a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any). Section 114 mandates that every summons issued under section 113 shall be accompanied by a copy of the order made under section 111 and such copy shall be delivered by the officer serving or executing the summons to the person served with the summons. The perusal of the file which

is produced before me shows that there is no order passed as required by section 111 of the said Code setting forth the substance of the information received by the learned Executive Magistrate. As held by this court in the case of Smt Christalin Costa and others vs. State of Goa and others (1993 Mharashtra Law Journal Page 1409), show cause notice can be given only after such an order is passed.

5. Thus, if such order is not passed, the very initiation of proceedings by sending summons/show cause notice is illegal and the proceedings are therefore required to be quashed. Only on this limited ground, the Application must succeed.

6. Hence, I pass the following order:

. Notice dated 19th July, 2006 and the proceedings of case No.28 of 2006 are quashed and set aside. Rule is accordingly made asbolute.

JUDGE